

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

GRUPO PETROTEMEX, S.A. DE))
C.V. and DAK AMERICAS LLC,)	Civil Action No. 16-cv-02401 SRN/HB
)	
v.)	
Plaintiffs,)	POLYMETRIX'S MEORANDUM OF
)	LAW IN SUPPORT OF EXPEDITED
)	MOTION PURSUANT TO
)	FED.R.CIV.P. 30(b)(4)
POLYMETRIX AG,)	
)	
Defendant.)	
)	

Defendant Polymetrix AG (“Polymetrix”) submits this memorandum of law in support of its motion pursuant to Fed.R.Civ.P. 30(b)(4) for an order that the previously noticed depositions of Polymetrix’s witnesses be taken during the week of August 3, 2020 by remote videoconference with the witnesses physically located in Switzerland.

Rule 30(b)(4) of the Federal Rules of Civil Procedure provides:

(b) Notice of the Deposition; Other Formal Requirements.

* * *

(4) By Remote Means. The parties may stipulate—or the court may on motion order—that a deposition be taken by telephone or other remote means. For the purpose of this rule and Rules 28(a), 37(a)(2), and 37(b)(1), the deposition takes place where the deponent answers the questions.

During the status conference on April 17, 2020:

The Court instructed the parties to promptly initiate the Hague Convention process required to enable them to conduct the depositions by videoconference, while continuing to monitor changes in travel restrictions and public health guidance that could permit the depositions to be taken legally and reasonably safely outside of Switzerland, either in person or by videoconferencing means, sooner than they could be arranged through the Hague Convention process. In other words, the Court instructed the parties to pursue all three potential options, with the object of employing the one that could accomplish the depositions most expeditiously while still complying with the law and public health guidance.

[ECF No. 587].

In accordance with the Court’s instruction, the parties jointly filed an application with the Swiss Federal Department of Justice and Police (“FDJP”) for the appointment of Commissioners under Chapter II of the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (“Hague Convention”). The FDJP granted the parties’ request and authorized the depositions of Polymetrix’s witnesses to be conducted by means of video conferencing in Switzerland. [ECF No. 618-2].

In further accordance with the Court’s instruction at the April 17, 2020 status conference, the parties continued to monitor changes in travel restrictions and public health guidance to determine whether it would be possible to take the depositions “legally and safely outside of Switzerland, either by videoconferencing means or in person.” To that end, the parties updated the Court on the travel restrictions and public health guidance for the United States, United Kingdom and European Union countries. [ECF Nos. 629 and 631]. In its July 26, 2020 letter to the Court, Polymetrix explained that it

was not possible to take the depositions in person in the United States, United Kingdom or European Union countries. [ECF No. 629].

In their July 29, 2020 response letter, while conceding that it was not possible to take the depositions in person in the United States, United Kingdom or any European Union countries, GPT/DAK contended that St. Maarten “may be a viable option where the depositions of Polymetrix can take place in person.” [ECF No. 631 at 1]. Polymetrix’s witnesses will not agree to travel from Switzerland to St. Maarten for depositions. Moreover, since the Court indicated in no uncertain terms during the July 9, 2020 case management conference that it was not going to order any witnesses to travel during the COVID-19 pandemic, Polymetrix will not explain the reasons why St. Maarten is not a “viable option.”

Because there are no viable options to take the Polymetrix depositions in person in the near future due to the COVID-19 pandemic, Polymetrix respectfully requests that the Court order pursuant to Rule 30(b)(4) that the Polymetrix depositions be taken by remote videoconference with the witnesses physically located in Switzerland beginning August 3, 2020. In that regard, Polymetrix respectfully requests the Court order that the individual depositions of Messrs. Polyakov, Müller and Christel be taken on August 3-5, 2020, with each deposition being limited to one day of 7 hours on the record as provided by Fed.R.Civ.P. 30(d)(1) and the Amended Scheduling Order. [ECF No. 431 at 3]. Polymetrix further requests the Court order that the Rule 30(b)(6) deposition of Polymetrix be taken on August 6-7, 2020 and be limited to 14 hours on the record as provided by the Amended Scheduling Order. [ECF No. 431 at 4]. Finally, Polymetrix

requests the Court order that all of the depositions be taken during normal business hours in Switzerland, i.e., between 9:00 a.m. and 5:00 p.m. CEST.

Dated: July 13, 2020

Respectfully Submitted,

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